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LEGEND:

County =

Bonds =

State =

Facility =

Issuer =

Federal Agency =

A =

B =

C =

D =

E =

Dear

This responds to the request by County for a ruling that the federal contract described below will not result in private business use of the Bonds within the meaning of § 141(b) of the Internal Revenue Code (the “Code”).

Facts and Representations

You make the following factual representations. County is located in State and currently operates prisoner detention facilities within its borders that house County prisoners. County’s prison facilities also serve as “the jail of last resort” for other local government entities located within County’s borders. As the jail of last resort, County’s prison facilities accept prisoners from the other local government entities at no charge.

County has been experiencing a growth in population, which it expects will continue for the foreseeable future. According to the United States Census Bureau, County’s population increased by A percent between 1990 and 2000, and by B percent between 2000 and 2005. The increasing number of prisoners that has come with this population growth has caused County’s detention facilities to approach maximum occupancy. To meet its increasing demand for detention facilities, County will construct a new detention facility (the “Facility”) within its borders.

Issuer will issue the Bonds on behalf of County to finance the construction costs of Facility as well as to purchase the land on which Facility will be located. The Bonds will have a term of C years.

Because Facility will be constructed and operated in accordance with all State and federal prison standards, Facility will be able to house local government prisoners and federal prisoners. There will be no prohibition or restriction on Facility housing prisoners from other counties or other governmental units located outside County’s borders, other than capacity restraints. County will enter into a contract (the “Federal Contract”) with the Federal Agency under which the Federal Agency will be able to transfer federal prisoners to the Facility on a space-available, first-come, first-served basis. Federal Agency will pay for each housed prisoner a per-diem rate that is approximately the same rate that other nongovernmental persons who enter into similar transfer agreements would pay. However, County does not expect to enter into any similar agreements with nongovernmental persons other than Federal Agency, nor does it expect to enter into agreements with other counties or other governmental units outside County.

The term of use under the Federal Contract will not exceed 100 days, and Federal Agency will have no right to renew. The Federal Contract will automatically renew for a period of less than 100 days absent cancellation by either County or Federal Agency, and County reasonably expects that Federal Agency will allow the Federal Contract to renew for at least five years.

At the time construction of Facility is completed and Facility is placed in service, County expects that County prisoners or prisoners of the other local government entities (the “non-federal prisoners”) will occupy at least D percent of Facility beds. All remaining Facility beds will be available for occupancy by federal prisoners. After Facility’s first five years of operation, County expects that federal prisoners will occupy less than E percent of the beds. Thereafter, County expects the percentage of federal prisoners to decline at a rate inverse to County’s expected rate of population increase. County expects non-federal prisoners to occupy more than 90 percent of Facility beds well before the end of the C-year term of the Bonds.

County represents that Facility is being constructed to serve the long-term needs of County, and is not being constructed for a principal purpose of providing the Facility for use by Federal Agency.

Law and Analysis

Under § 103(a), gross income does not include interest on any state or local bond. Section 103(b) provides, however, that § 103(a) shall not apply to any private activity bond which is not a qualified bond (within the meaning of § 141).

Section 141(a) provides that the term “private activity bond” means any bond issued as part of an issue which (1) meets the private business use test of § 141(b)(1) and the private security or payment test of § 141(b)(2), or (2) meets the private loan financing test of § 141(c).

Section 141(b)(1) provides, in general, that an issue meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use.

Section 141(b)(6) provides that the term “private business use” for purposes of § 141(b), means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. For this purpose, any activity carried on by a person other than a natural person is treated as a trade or business.

Section 150(a)(2) provides that the term “governmental unit” does not include the United States or any agency or instrumentality thereof.

Section 1.141-3(a)(1) of the Income Tax Regulations provides that the private business use test relates to the use of the proceeds of an issue. The 10 percent private business use test of § 141(b)(1) is met if more than 10 percent of the proceeds of an issue is used in a trade or business of a nongovernmental person. For this purpose, the use of financed property is treated as the direct use of proceeds. Any activity carried on by a person other than a natural person is treated as a trade or business.

Section 1.141-3(b)(1) provides that both actual and beneficial use by a nongovernmental person may be treated as private business use. In most cases, the private business use test is met only if a nongovernmental person has special legal entitlements to use the financed property under an arrangement with the issuer. In general, a nongovernmental person is treated as a private business user of proceeds and financed property as a result of ownership; actual or beneficial use of property pursuant to a lease, or a management or incentive payment contract; or certain other arrangements such as a take or pay or other output-type contract.

Section 1.141-3(b)(7) provides that any other arrangement that conveys special legal entitlements for beneficial use of bond proceeds or of financed property that are comparable to special legal entitlements such as ownership or leases (or other arrangements not relevant for this purpose) results in private business use. For example, an arrangement that conveys priority rights to the use or capacity of a facility generally results in private business use.

Section 1.141-3(c)(1) provides generally that general public use is not private business use. Use of financed property by nongovernmental persons in their trades or businesses is treated as general public use only if the property is intended to be available and in fact is reasonably available for use on the same basis by natural persons not engaged in a trade or business.

Section 1.141-3(c)(2) provides generally that use under an arrangement that conveys priority rights or other preferential benefits is not use on the same basis as the general public. Arrangements providing for use that is available to the general public at no charge or on the basis of rates that are generally applicable and uniformly applied do not convey priority rights or other preferential benefits.

Section 1.141-3(d)(3)(i) provides that use by a nongovernmental person pursuant to an arrangement, other than an arrangement resulting in ownership of financed property by a nongovernmental person, is not private business use if -- (A) The term of the use under the arrangement, including all renewal options, is not longer than 100 days; (B) The arrangement would be treated as general public use, except that it is not available for use on the same basis by natural persons not engaged in a trade or business because generally applicable and uniformly applied rates are not reasonably available to natural persons not engaged in a trade or business; and (C) The property is not

financed for a principal purpose of providing that property for use by that nongovernmental person.

Section 1.141-1(b) defines the term “renewal option” to mean a provision under which either party has a legally enforceable right to renew the contract. Thus, for example, a provision under which a contract is automatically renewed for 1-year periods absent cancellation by either party is not a renewal option (even if it is expected to be renewed).

Example 15 of § 1.141-3(f) involves an issuer using all of the proceeds of its bonds to construct a prison. The issuer contracts with a federal agency to house federal prisoners on a space available, first-served basis. The federal agency will be charged approximately the same amount for each prisoner as other persons that enter into similar agreements. It is reasonably expected that other persons will enter into similar agreements. The term of the use under the contract is not longer than 100 days and the federal agency has no right to renew, although the issuer reasonably expects to renew the contract indefinitely. The prison is not financed for a principal purpose of providing the prison for use by the federal agency. It is reasonably expected that during the term of the bonds, more than 10 percent of the prisoners at the prison will be federal prisoners. The federal agency’s use of the facility is not general public use because this type of use (leasing space for prisoners) is not available for use on the same basis by natural persons not engaged in a trade or business. The issue does not meet the private business use test, however, because the leases satisfy the exception of § 1.141-3(d)(3)(i).

The use of Facility by Federal Agency as described herein satisfies the exception for arrangements not available for use on the same basis by natural persons not engaged in a trade or business contained in § 1.141-3(d)(3)(i). The term of use under the Federal Contract will not exceed 100 days, and Federal Agency will have no right to renew. The Federal Contract does not contain a renewal option under § 1.141-1(b) since it can be cancelled by either County or Federal Agency. Although County does not expect to enter into similar agreements with other nongovernmental persons, Facility is nevertheless available for use on the same basis by other nongovernmental persons (as well as by other counties or governmental units located outside County). Also, Federal Agency will pay approximately the same per-diem rate under the Federal Contract that other nongovernmental persons who enter into similar agreements would pay. County represents that Facility is being constructed to serve the long-term needs of County, and is not being constructed for a principal purpose of providing the Facility for use by Federal Agency.

Conclusion

Based on the information submitted and representations made, we conclude that the Federal Contract will not result in private business use of the Bonds within the meaning of § 141(b).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with a Power of Attorney on file with this office, a copy of this letter is being sent to County's authorized representatives.

The ruling contained in this letter is based upon information and representations submitted by County and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the materials submitted in support of the request for a ruling, it is subject to verification upon examination.

Sincerely,

Assistant Chief Counsel
(Exempt Organizations/Employment Taxes/
Government Entities)

By:

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Tax Exempt Bond Branch